NOT DESIGNATED FOR PUBLICATION

DIVISION IV

ARKANSAS COURT OF APPEALS

No. CACR 07-773

JEFFERY A. WORKMAN, APPELLANT, VS. STATE OF ARKANSAS, APPELLEE,	**Opinion Delivered** FEBRUARY 13, 2008 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, [NO. CR-2005-1127] HON. J. MICHAEL FITZHUGH, JUDGE, AFFIRMED

JOHN MAUZY PITTMAN, Chief Judge

This is an appeal from the revocation of appellant's suspended sentence. A petition to revoke was filed alleging that appellant violated the conditions of his suspension by failing to pay restitution as ordered and by committing a new offense of theft of property. After a hearing, the trial court found that appellant had violated the conditions of his suspension and sentenced him to six years' imprisonment. On appeal, appellant asserts that the trial court erred in permitting testimony that violated his right to confront witnesses. We affirm.

The alleged Confrontation Clause violation was the testimony of a police officer that an absent person watched a surveillance video and identified appellant as the person rolling a cart containing a television out the door of a Wal-Mart store without paying. However, because there was testimony that appellant himself admitted that he was in fact the person

seen on the surveillance video, appellant suffered no prejudice from the alleged confrontation violation.

Appellant anticipates that the error will be held to be harmless and argues that we should, as a matter of public policy, "limit the use of harmless error in order to ensure that the rights of the citizens are protected." We cannot do so. It was formerly the law in Arkansas that error was presumed to be prejudicial. *See, e.g., McIntosh v. State,* 262 Ark. 7, 552 S.W.2d 649 (1977). The Arkansas Supreme Court expressly overturned this prior law in *Berna v. State*, 282 Ark. 563, 670 S.W.2d 434 (1984), basing its holding on public policy grounds enunciated by the United States Supreme Court. The *Berna* court quoted *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984), where the Supreme Court said:

> This Court has long held that "'[a litigant] is entitled to a fair trial but not a perfect one,' for there are no perfect trials." *Brown v. United States*, 411 U.S. 223, 231-232 (1973), *quoting Bruton v. United States*, 391 U.S. 123, 135 (1968), and *Lutwak v. United States*, 344 U.S. 604, 619 (1953). Trials are costly, not only for the parties, but also for the jurors performing their civic duty and for society which pays the judges and support personnel who manage the trials. It seems doubtful that our judicial system would have the resources to provide litigants with perfect trials, were they possible, and still keep abreast of its constantly increasing caseload. . . .
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> We have also come a long way from the time when all trial error was presumed prejudicial and reviewing courts were considered "'citadels of technicality.'" *Kotteakos v. United States*, 328 U.S. 750, 759 (1946), *quoting* KAVANAGH, IMPROVEMENT OF ADMINISTRATION OF CRIMINAL JUSTICE BY EXERCISE OF JUDICIAL POWER, 11 A.B.A.J. 217, 222 (1925). The harmless-error rules adopted by this Court and Congress embody the principle that courts should exercise judgment in preference to the automatic reversal for "error" and ignore errors that do not affect the essential fairness of the trial. *See Kotteakos*, 328 U.S. 759-760.

Greenwood, 464 U.S. at 553.

The public policy grounds argued by appellant have therefore already been considered and rejected by the Arkansas Supreme Court, and we are bound by this precedent. *See Brewer v. State*, 68 Ark. App. 216, 6 S.W.3d 124 (1999).

Affirmed.

GLOVER and MILLER, JJ., agree.